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People of the State of California

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

PATHWAYDATA, INC., doing business as
MyPerfectCredit and Palisadespwd;
DAVID COULTER;
and DOES 1 through 20, inclusive

Defendants.

Case No.:

**COMPLAINT FOR CIVIL
PENALTIES, INJUNCTION AND
OTHER EQUITABLE RELIEF**

The People of the State of California, by and through Bill Lockyer, Attorney General of the State of California, allege the following on information and belief:

DEFENDANTS

1. PathwayData, Inc. ("Pathway") is a Nevada Corporation which does business in San Diego County and elsewhere. Pathway does business under the name MyPerfectCredit, and Palisadespwd.

2. Defendant David Coulter ("Coulter") is sued in his individual capacity as owner and chief executive officer of Pathway and of all of its aliases. Defendant Coulter operates,

controls, manages, supervises, and directs the operations and activities of Pathway, including but not limited to, the activities of MyPerfectCredit and Palisadespwd.

3. Defendants at all times mentioned herein transacted business in the County of San Diego and elsewhere. The violations of law alleged herein have been and are being carried out within San Diego County and elsewhere.

4. The true names and capacities of defendants sued herein under the fictitious names of Does 1 through 20, inclusive, are unknown to Plaintiff who therefore sues said defendants by such fictitious names. Plaintiff will amend its complaint to show the true names of such defendants when the same have been ascertained. Whenever reference is made in this Complaint to "Defendants," such reference shall include DOES 1 through 20, Pathway and Coulter.

5. Whenever reference is made in this Complaint to any act or transaction of any defendant corporation, company, association, business entity, or partnership, such allegations shall be deemed to mean that said defendant and its owners, officers, directors, agents, employees, or representatives did or authorized such acts while engaged in the management, direction, or control of the affairs of the Defendant and while acting within the scope and course of their duties.

6. Whenever reference is made in this Complaint to any act of any individual defendant, such allegations shall be deemed to mean that said defendant is and was acting as a principal, under an express or implied agency, or with actual or ostensible authority to perform the acts alleged.

7. Whenever reference is made in this Complaint to any act of any defendant, such allegations shall be deemed to mean the act of each defendant herein, acting individually and jointly.

8. At all times mentioned herein, each defendant knew or realized that the other defendants were engaging in or planned to engage in the violations of law alleged in this Complaint. Knowing or realizing that other defendants were engaging in such unlawful conduct, each defendant nevertheless facilitated the commission of those unlawful acts. Each defendant

1 intended to and did encourage, facilitate, or assist in the commission of the unlawful acts, and
2 thereby aided and abetted the other defendants in the unlawful conduct.

3 9. Defendants have engaged in a conspiracy, common enterprise, and common
4 course of conduct, the purpose of which is and was to engage in the violations of law alleged in
5 this Complaint.

6 10. At all times mentioned herein, each of the defendants acted as the principal, agent
7 or representative of each of the other defendants, and in doing the acts herein alleged, each
8 defendant was acting within the course and scope of the agency relationship with each of the
9 other defendants, and with the permission and ratification of each of the other defendants.

10 **NATURE OF DEFENDANTS' BUSINESS**

11 11. Defendants operate a "Credit Services Organization" within the meaning of Civil
12 Code section 1789.12. A Credit Services Organization is a "person" who represents that, in
13 exchange for the payment of money or other valuable consideration, it can perform services to
14 improve a buyer's credit record, history or rating, or assist in obtaining an extension of credit for
15 the buyer. These services are sometimes also referred to as "credit restoration" or "credit
16 repair." From December 2003, to December 2005, defendants operated their credit services
17 organization without having obtained a certificate of registration from the California Department
18 of Justice, as required by Civil Code section 1789.25, but obtained said registration in December
19 2005.

20 12. Defendants represent they can assist members of the public who purchase their
21 service ("buyers") in making "corrections" to their credit reports. Defendants claim they will
22 assist buyers in disputing unfavorable information contained in the credit reports of buyers of
23 their service.

24 13. Defendants, advertising on-line and through a network of affiliate on-line entities,
25 offer to provide consumers with copies of their credit reports. Consumers who respond to these
26 advertisements are told that defendants offer a program whereby defendants obtain a copy of the
27 buyers credit reports from each of the three credit reporting entities.

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2 14. Once defendants obtain the credit reports, they forward the reports electronically
3 to the buyers. Buyers are then told they should review the reports and indicate to defendants
4 which adverse information they wish to challenge on each report.

5 15. Defendants offer a "695" and a "495" program. Under both programs,
6 defendants contact the credit reporting entities in regards to each challenge of adverse
7 information asserted by a buyer or assumed by the defendants. The difference between the
8 programs is that the buyer pays \$6.95 per challenge under the former and \$4.95 per challenge,
9 with a minimum of four challenges per month, under the latter. Under the 695 program, for
10 example, should defendants challenge the same adverse information which appears on each of
11 the three credit reports, the fee would be \$20.85 (three times \$6.95).

12 16. Although Defendants operate as a Credit Services Organization, they represent on
13 their web site to prospective buyers that their business is not a credit services organization and is
14 exempt from the Credit Services Act.

15 17. Defendants purchased a portfolio of customers from another credit services
16 organization, Palisades Holdings, Inc., doing business as ClearCredit, in late 2004. ClearCredit
17 was an unregistered credit services organization for much of its existence. Defendants sent e-
18 mails to the customers in this portfolio and automatically transferred them to Defendants'
19 program if they did not, within five days of Defendants sending the e-mail, advise Defendants
20 that they did not want to participate in Defendants' program. Defendants had no way to know if
21 those who did not respond ever received, opened or read the e-mail.

22 18. Those who did not respond were automatically transferred without their express
23 authorization. They were unlikely to have received from Defendants the information statement
24 required under Civil Code sections 1789.14 and 1789.15 and did not execute with Defendants
25 the contract required under Civil Code section 1789.16. Defendants proceeded to impose
26 charges of \$9.95 per month against these consumers. When these consumers did not pay these
27 unauthorized charges, Defendants referred their accounts to a collection agency for collection.

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2 19. Defendants also offer to assist buyers in obtaining a credit card, which could be a
3 secured credit card (i.e., a card where any debt incurred is secured by the buyer having funds on
4 deposit with the institution that issues the card) or a regular credit card. Defendants charge
5 \$29.95 for this service. Obtaining an extension of credit for a buyer, or providing assistance to a
6 buyer to obtain an extension of credit, in exchange for money, constitutes the performance of
7 services by a credit services organization, within the meaning of Civil Code section 1789.12,
8 subdivisions (b) and (c).

9 20. Defendants also offer a debt settlement program, whereby buyers authorize
10 Defendants to offer compromises to creditors to settle debts which appear on the credit reports.
11 Defendants charge \$6.95 for each such communication with a creditor. The purpose of this debt
12 settlement program was to improve the credit rating of buyers.

13 21. Fees imposed by Defendants for performance of their credit repair services were
14 directly charged by Defendants to buyers, without Defendants always having the express
15 authorization or knowledge of the buyers.

16 **FIRST CAUSE OF ACTION**

17 **UNTRUE OR MISLEADING REPRESENTATIONS IN** 18 **VIOLATION OF BUSINESS AND PROFESSIONS CODE** 19 **SECTION 17500**

20 22. Plaintiff re-alleges and incorporates by reference herein the allegations contained
21 in paragraphs 1 through 21.

22 23. Beginning at an exact date unknown to plaintiff, but within three years preceding
23 the filing of this Complaint, Defendants, with the intent to induce members of the public to
24 purchase their services, have made or caused to be made untrue or misleading representations
25 before the public in California, in violation of Business and Professions Code section 17500.
Such misrepresentations include, but are not limited to:

26 (a) That the business operated by Defendants is not a Credit Services
27 Organization;

28 (b) That the business operated by Defendants is exempt from the Credit

1 Services Act; and

2 (c) That the business operated by Defendants is exempt from the Credit
3 Services Act because it is a finance lender.

4 **SECOND CAUSE OF ACTION**

5 **ACTS OF UNFAIR COMPETITION AS DEFINED IN BUSINESS**
6 **AND PROFESSIONS CODE SECTION 17200**

7 24. Plaintiff re-alleges and incorporates by reference herein the allegations contained
8 in paragraphs 1 through 23.

9 25. Beginning on an exact date unknown to plaintiff but within four years preceding
10 the filing of this complaint, Defendants have engaged in acts of unfair competition as defined in
11 Business and Professions Code section 17200, including, but not limited to, the following:

12 (a) Defendants have violated Civil Code section 1789.25 in that they
13 conducted business as a credit services organization without at all times having
14 obtained a certificate of registration from the California Department of Justice.

15 (b) Defendants have violated Civil Code section 1789.13, subdivision (h), in
16 that they have engaged in a course of business which operated as a deception
17 upon others in connection with the offer or sale of the services of a credit repair
18 organization.

19 (c) Defendants have violated Civil Code section 1789.13, subdivision (i) in
20 that they have advertised the services of a credit service organization without
21 being registered with the Department of Justice at all times.

22 (d) Defendants have violated Civil Code section 1789.13, subdivision (l) in
23 that they have submitted buyers' disputes to a consumer credit reporting agency
24 without the buyers' knowledge.

25 (e) Defendants have violated Civil Code section 1789.14 in that they did not
26 at all times, prior to contracting with buyers for the use of their services, provide
27 such buyers with the information statement required by Civil Code section
28 1789.15.

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(f) Defendants have violated Civil Code section 1789.16, subdivision (a) in that they did not at all times herein provide buyers of their service with a written contract that complies with the requirements of Civil Code section 1789.16.

(g) Defendants have violated Civil Code section 1789.16, subdivision (a)(4) in that they did not at all times provide buyers of their service with the name and address of Defendants' California agent authorized to receive service of process.

(h) Defendants have unlawfully imposed charges on the credit cards of consumers for services these consumers did not order and who did not affirmatively authorize such charges.

(i) Defendants have violated Business and Professions Code section 17500, as more fully set forth in paragraph 23.

13 **THIRD CAUSE OF ACTION**

14 **VIOLATIONS OF THE CREDIT SERVICES ACT OF 1984,** 15 **CIVIL CODE SECTIONS 1789.10 ET SEQ.**

16 26. Plaintiff re-alleges and incorporates by reference herein the allegations contained
17 in paragraphs 1 through 25.

18 27. Each and every action by Defendants set forth in paragraphs 25 (a) through 25 (g)
19 constitutes a violation of the Credit Services Act of 1984, Civil Code sections 1789.10, et seq.

20 WHEREFORE, plaintiff prays:

21 1. That pursuant to Business and Professions Code sections 17203 and 17535,
22 Defendants and their officers, directors, principals, agents, representatives, employees,
23 successors, and assignees and all persons, corporations and other entities acting by, through,
24 under or on behalf of said Defendants, or acting in concert or participation with Defendants, be
25 restrained and enjoined from, directly or indirectly,

26 A. Engaging in or performing any acts of unfair competition, including but
27 not limited to, those acts alleged in paragraph 25 of this Complaint; and

28 B. Making any untrue or misleading representations, including, but not

1 limited to, those alleged in paragraph 23 of this complaint.

2 2. That pursuant to Civil Code section 1789.20, Defendants and their officers,
3 directors, principals, agents, representatives, employees, successors, and assignees and all
4 persons, corporations and other entities acting by, through, under or on behalf of said
5 Defendants, or acting in concert or participation with Defendants, be restrained and enjoined
6 from directly or indirectly violating Title 1.6E of the Civil Code, the Credit Services Act of
7 1984, including, but not limited to those acts alleged in paragraphs 25 and 27 of this Complaint.

8 3. That pursuant to Business and Professions Code section 17206, Defendants, and
9 each of them, be ordered to pay a civil penalty of \$2,500 for each act of unfair competition as
10 defined in Business and Professions Code section 17200 as proved at trial.

11 4. That pursuant to Business and Professions Code section 17536, Defendants, and
12 each of them, be ordered to pay a civil penalty of \$2,500 for each violation of Business and
13 Professions Code section 17500 as proved at trial.

14 5. That pursuant to Business and Professions Code sections 17203 and 17535, and
15 pursuant to this Court's inherent equitable power, Defendants be ordered to restore to every
16 person who has filed or will file a complaint against Defendants all money and property which
17 was acquired by Defendants through their unfair or unlawful conduct as proved at trial.

18 6. That plaintiff be given such other and further relief as the nature of this case may
19 require and that this Court deems proper to fully and successfully dissipate the effect of the
20 unfair or fraudulent business practices and untrue or misleading representations complained of
21 herein.

22 7. That plaintiff recover its costs.

23 DATED: February 1, 2006

24 BILL LOCKYER
Attorney General of California

25 ALBERT NORMAN SHELDEN
26 Senior Assistant Attorney General

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